



DEPARTMENT OF THE NAVY
NAVAL SCHOOL OF HEALTH SCIENCES
BETHESDA, MARYLAND 20889-5611

IN REPLY REFER TO

NSHSBETHINST 5810.1K

13

JAN 27 1995

NSHS BETHESDA INSTRUCTION 5810.1K

From: Commanding Officer

Subj: SEARCHES AND SEIZURES

Ref: (a) Manual for Courts-Martial, 1984, Part III
(b) United States v. Kalschever, 11 M.J. 373 (C.M.A. 1981)
(c) Manual of the Judge Advocate General
(d) NNMCIINST 5800.2B

Encl: (1) Command Authorized Searches: The Range of Authority
(2) Request for Authorization to Conduct Search and Seizure
(3) Record of Authorization for Search
(4) Consent to Search
(5) OPNAV 5527/22, Evidence/Property Custody Receipt

1. Purpose. To provide information concerning searches and seizures on board the Naval School of Health Sciences (NSHS), Bethesda, Maryland and the National Naval Medical Center (NNMC), Bethesda, Maryland.

2. Cancellation. NSHSINST 5810.1J

3. Background

a. The Fourth Amendment to the Constitution of the United States forbids unreasonable searches and seizures. This prohibition has been liberally construed and applied by the courts to all law enforcement agencies of the federal, state and local governments in the effort to safeguard the individual citizen's right to privacy and security. The concepts have been incorporated into reference (a) by the Military Rules of Evidence (MRE). MRE 311 provides, in part . . .

"that with limited exceptions: Evidence obtained as a result of an unlawful search or seizure made by a person acting in a governmental capacity is inadmissible against an accused. If the accused makes a timely motion or objection and:

- the accused had a reasonable expectation of privacy in the person, place or property searched; and/or

- the accused had a legitimate interest in the property or evidence seized when challenging a seizure; then

- the accused would otherwise have grounds to object to the search or seizure under the Constitution of the United States as applied to members of the armed forces."

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b. The basic question in determining the legality of a search or seizure is whether the search or seizure of the evidence is reasonable. In the military context, a search is reasonable, and therefore lawful, if conducted in accordance with one of the methods set forth in MRE 314, 315 or 316.

4. Applicability. This instruction applies to NSHS, Bethesda, Maryland. Echelon V Detachments will establish a similar policy in consonance with guidance contained in this directive and related directives issued by higher authority.

5. Command authorized searches

a. The Commanding Officer, acting under the authority of office prescribed in MRE 315, carries out the duties of a neutral and detached magistrate in authorizing searches based on probable cause(s). In accordance with MRE 315, reference (b), and section 0177 of reference (c), the power to authorize searches may not be delegated to a subordinate officer. The Commanding Officer may authorize a search or seizure of any person(s) or property over which the she/he exercises control.

b. During periods when the Executive Officer (or other officer acting under regulations directing the delegation of command) is acting for the Commanding Officer, the authority to authorize searches and seizures described herein shall be exercised by that officer. Documentation of the delegation of command should be attached to or described within the record of Authorization of Search.

c. The Command Duty Officer (CDO) and Officer of the Day (OOD) are not empowered by this instruction to order searches or seizures under the authority by the Commanding Officer.

d. The power to authorize a search may only be exercised by a neutral and detached individual. An individual may not be considered neutral and detached when:

(1) she/he is a victim of or witness to the crime;

(2) she/he actively obtains the information to be used as the basis for a search rather than assessing information presented by others;

(3) she/he actively directs the activities of informants, controlled purchases of drugs, goods or services, surveillance operations, or detector dogs.

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e. Where the Commanding Officer has been disqualified on the basis of lack of neutrality or detachment, the Executive Officer shall be authorized to act in her/his behalf.

6. Scope of authorization

a. The Commanding Officer's jurisdiction to authorize a search is dependent upon control over the person or the property to be searched, enclosure (1). A search authorization may be issued by the Commanding Officer in accordance with MRE 315 for a search of:

(1) the person or anyone subject to military law or the law of war;

(2) military property of the United States or of objective fund activities or objective fund contractors subject to the authority of the Commanding Officer;

(3) persons or property on board NSHS.

b. Questions arising concerning whether a person or property is subject to the authority of the Commanding Officer may be referred to the Staff Judge Advocate or the Assistant Staff Judge Advocate. Persons or property under the jurisdiction of the Commander, NNMCM shall fall under the guidance of reference (d) and requests for authorization to conduct searches and seizures, enclosure (2), shall be referred to the Staff Judge Advocate's Office, NNMCM.

c. If the person whose property is to be searched is present during a search, the person conducting the search should notify the individual of the search authorization and the object and general scope of the search. Such notice may be made prior to or during the search. Failure to provide such notice does not render the search unlawful.

d. Nonconsensual body views and intrusions conducted in accordance with MRE 312, should be conducted when practicable by a person of the same sex as the person being searched. However, such searches, when properly conducted, are not tendered unlawful, if conducted by a person of the opposite sex.

7. Power to search

a. Any commissioned officer, warrant officer, petty officer or noncommissioned officer, when in the execution of guard or police duties, any criminal investigator, member of the Shore Patrol or person designated by proper authority to perform guard

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or police duties; any agent of any such person attached or assigned to NSHS, may conduct or direct the execution of a search authorized pursuant to this instruction.

b. When a search is authorized, the objective of the search must be specified. In addition to identifying the objective of the search, the person authorizing the search must also specify the scope of the search, indicating specifically the place or things to be searched. The persons conducting the search may intrude into any location within the scope of the authorization in which the specified object of the search could be reasonably located. Once the item sought is located, the search must cease, unless precluded by exigencies. Enclosure (2) should be utilized in requesting authority to conduct a search and seizure. Enclosure (3) should be utilized in ordering a search and seizure.

8. Basis for search authorization (probable cause)

a. A search authorization issued under MRE 315 and this instruction must be based upon probable cause. Probable cause arises when facts exist which would lead a reasonable person to believe that:

(1) a crime was probably committed, and

(2) that certain evidence of that crime will probably be found on the person or in the place designated to be searched. This determination must be based solely on the information provided to the individual authorizing the search and should be based on an assessment of the "totality of the circumstances".

b. The general factors considered in evaluation in totality of the circumstances are: the source of the information, the timeliness of the information and the details concerning the type of evidence and its location.

(1) Where the source of the information is unknown (i.e., an anonymous tip), specific, independent corroboration of the information may be sufficient to conclude that the tip is reliable.

(2) Where the source of the information is known (e.g., Chief Master-at-Arms, informant, etc.), the following data may be used in assessing the "totality of the circumstances" indicating probable cause:

(a) identity of the source (rank, rate, position);

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(b) reliability of the source (past accuracy, general reputation for truthfulness, past "track record" for accuracy of information);

(c) degree of corroboration;

(d) demeanor of the informant;

(e) whether the information is given under oath.

9. Exigent circumstances searches. A search authorization is not required under MRE 315(g) in order to conduct a search based upon probable cause when immediate action is necessary to prevent the removal or other loss of evidence of criminal activity. This exigency must remove the opportunity to obtain an authorization and therefore the need for it. In order to proceed with the search, the following is required:

a. the facts known to the government official at the time of the intrusion must be sufficient to establish probable cause;

b. there must be a substantial risk that the evidence in the area to be searched may be removed, destroyed, concealed or otherwise diminished physically or in its probative value;

c. military operations or the anticipated delay involved reasonably precludes obtaining a command authorization to search the area in time to preserve the evidence.

10. Searches not requiring an authorization or probable cause. In each of the following circumstances the public's interest in security and order has been found by the courts to out-weigh any potential individual right to privacy to such a clear extent that neither probable cause nor an authorization is required.

a. **Search of government property.** Because there is not reasonable expectation of personal privacy in government controlled property, such property may be searched by proper officials without an authorization or probable cause. When government property is issued to an individual for personal use under circumstances where a privacy interest is reasonably understood, the exception does not apply.

b. **Consent searches.** The search of a person or of property under the control of that person with the voluntary consent of that person requires neither an authorization nor probable cause. Voluntary consent envisions a thoughtful permission to search, given without the use of threats, promises of special treatment, or the abuse of positions of authority. Consent may be withdrawn

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at any time before or during the search and may limit the area or possessions to be searched. Refusing to give consent or revoking it does not in itself contribute to establish probable cause. However, evidence obtained during a consent search prior to its early termination by the consenting party may be considered in later determining probable cause for a continuation of the search by authorization. The use of a written Consent to Search Form, enclosure (4) is recommended, but the fact that a consent form has been executed in writing does not make it binding on the person if a withdrawal or limitations subsequently made. Likewise, consent is not necessarily invalid where it is not acknowledged or memorialized in writing.

c. **Emergency intrusions.** Pursuant to MRE 314(I), when officials discover a person who is sick, injured or incapacitated, they may search the individual and the adjacent area in order to determine identification or find information that would assist in rendering medical aid. Medical personnel may remove clothing or other items from such individuals in order to diagnose or treat the medical condition. Officials may enter a building or room when they believe in good faith that their actions are required for a valid emergent medical purpose. Evidence found during these activities is not subject to the exclusion applicable to evidence discovered during improper searches.

11. Non-search examinations

a. **Inspections**

(1) The Commanding Officer is responsible for the readiness, cleanliness, safety and maintenance of the command. The uniqueness of military life and the responsibility of the Commanding Officer for the security, health, safety, welfare and discipline of command personnel permits command sanctioned administrative inspections of military personnel and their property. Items of contraband or other evidence seized during such administrative inspections are generally admissible against the accused at a subsequent court-martial. MRE 313(b) provides that a military inspection is an examination of the whole or part of a unit, organization, installation, vessel, aircraft or vehicle, conducted as an incident of command. The primary purpose of which is to determine and to ensure security, military fitness or good order and discipline.

(2) Inspections shall be approved in advance by the Commanding Officer and shall be conducted in a reasonable fashion. They shall comply with MRE 312, if applicable, and may utilize any reasonable natural or technological aid. Inspections

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may be conducted with or without notice to those inspected. Unlawful weapons, contraband or other evidence of crime located during an inspection may be seized. An order to produce bodily fluids, such as urine, is permissible.

b. **Administrative inventories.** Unlawful weapons, contraband or other evidence of crime discovered in the process of an inventory conducted primarily for administrative purposes may be seized. Inventories shall be conducted in a reasonable fashion and shall comply with MRE 312, if applicable. Three common types of inventories are the seabag inspection, the inventory of a deserter's property and the incarceration inventory. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inventory within the meaning of this instruction.

c. **Plain view.** When a government official is in a place where he or she has a lawful right to be and observes contraband or other evidence, through an unobstructed view, such items may be seized. Plain view observations must not, however, involve an intrusion upon the reasonable expectations of privacy of the individual.

d. **Abandoned property.** When an individual discards property, such property is considered abandoned with all rights of ownership and expectations of privacy lost with respect to that property.

12. Seizures

a. A seizure is the act of a government official taking physical custody of property or an individual.

b. All property seized shall be identified in accordance with currently accepted investigatory procedures in use by the law enforcement officials in the Department of the Navy. The property shall normally be marked or tagged with information such as the date and time of the seizure, place where seized and signature or initials of the person seizing the property and witnesses to the seizure. Chain of custody documentation will be maintained for all seized items utilizing enclosure (5).

13. Nonrestrictions

a. Nothing contained herein should be construed as limiting the authority set forth in reference (a) to conduct the following types of searches not requiring probable cause of a search authorization:

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- (1) a search pursuant to a lawful apprehension;
- (2) frisk incident to a lawful stop;
- (3) searches of government property, unless the person to whom the property is issued has a reasonable expectation of privacy therein;
- (4) searches of open fields and woodlands;
- (5) emergency searches to save life or render immediate medical aid;
- (6) searches with the freely given consent of the person exercising control over the property to be searched.

b. Mere submission to the apparent authority of personnel performing law enforcement duties or acquiescence in an announced or indicated intent to search is not a voluntary consent.

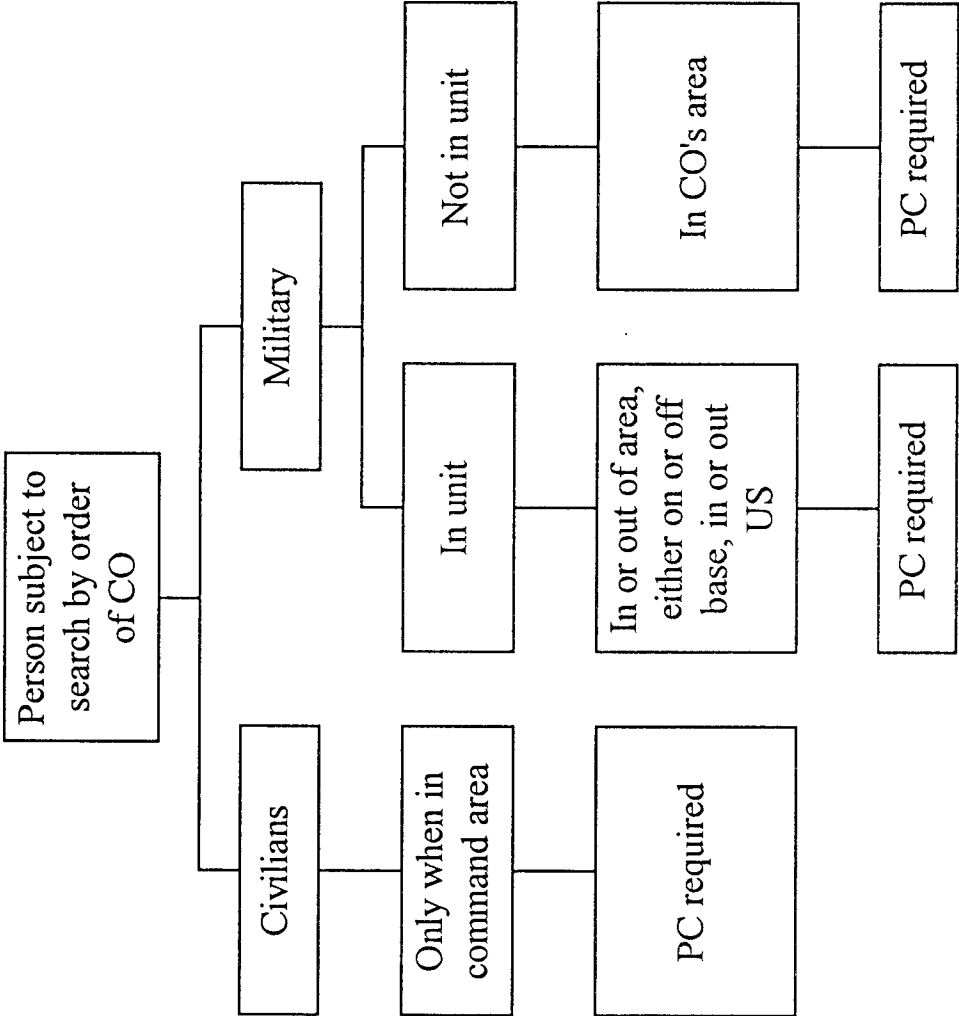
c. Consent may be limited in any way by the person granting consent, including limitation in terms of time, place or property, and may be withdrawn at any time. Enclosure (4) should be used, whenever practicable, to secure and record consent. If any questions are to be asked of an accused or a suspect other than simply requesting consent, including a request to identify ownership or property, the accused or suspect must be given Article 31(b) warnings.

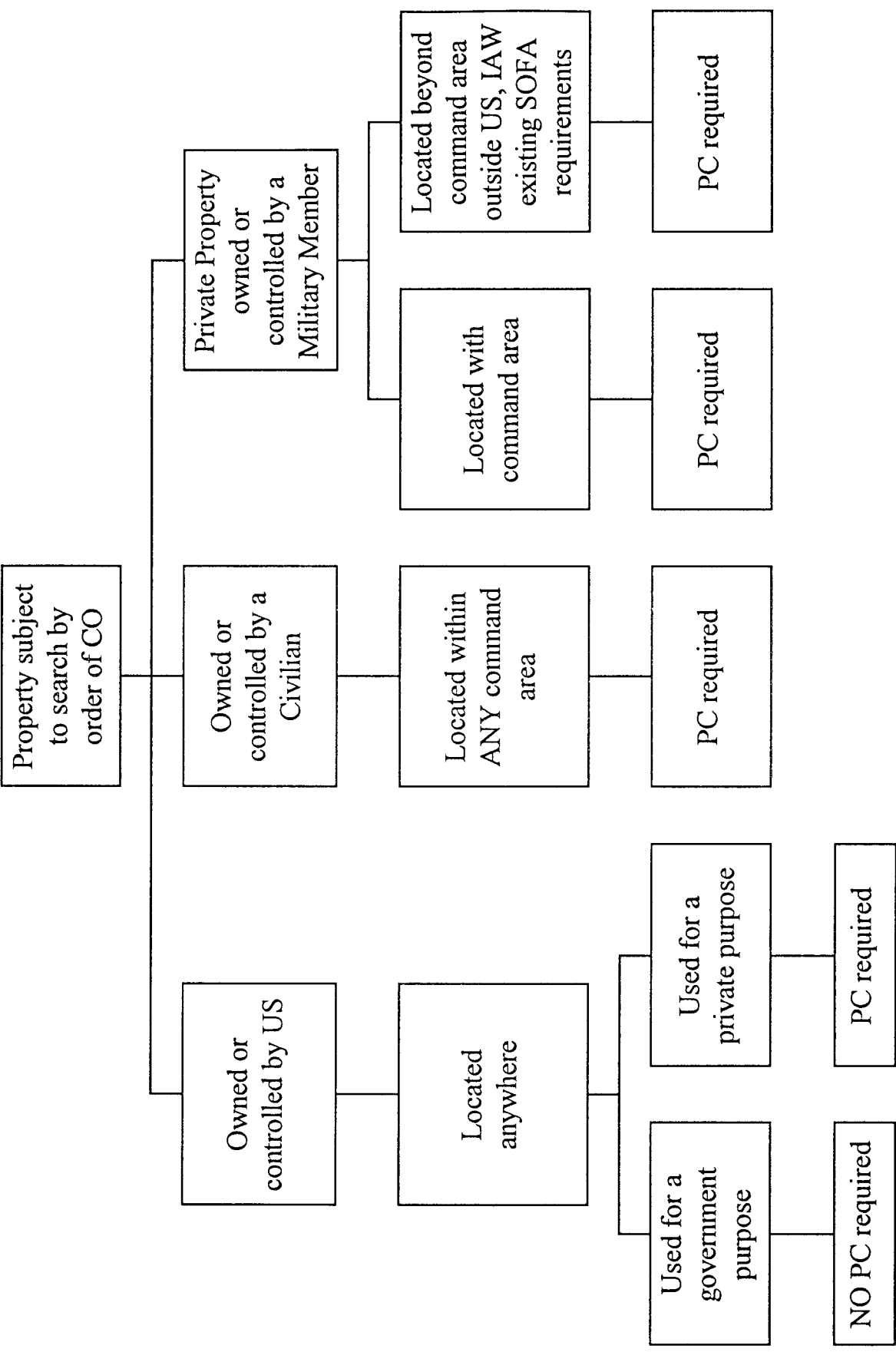

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Distribution:
Lists I & III

Command Authorized Searches:

Range of Authority





REQUEST FOR AUTHORIZATION TO CONDUCT SEARCH AND SEIZURE
REQUEST FOR AUTHORIZATION TO CONDUCT SEARCH AND SEIZURE

WITH THE UNITED STATES ARMED FORCES AT _____
(Location)¹

1. I, _____
(Name) (Organization or Address)

having first been duly sworn, state that² _____

2. I further state that³ _____

3. In view of the foregoing, the undersigned requests that permission be granted for the search of⁴

(The person)

(and) (The quarters or billets) (and)

_____ and seizure of _____

(The automobile)

(Items searched for)

(Signature)

Typed name and organization)

Enclosure (2)

J U R A T

I _____, do hereby certify that the foregoing request for authorization
conduct search and seizure was subscribed and sworn to before me this _____ day of _____, 19____, by
_____, who is known to me to be _____
(Name of person making statement) (Status)*

And I do further certify that I am on this date empowered to administer oaths by authority of

(Authority)*

(Signature)

(Typed name, grade, and Branch of Service)

(Command or Organization)

INSTRUCTIONS

Insert Country, State, and County in which request is acknowledged. If military considerations preclude disclosure of exact place of execution, insert "In a Foreign Country" or "In a possession of the United States outside of the continental United States."

2. In paragraph 1, set forth a concise factual statement of the offense that has been committed or the probable cause to believe that it has been committed. Use additional pages if necessary.

3. In paragraph 2, set forth facts establishing probable cause for believing that the person, premises, or place to be searched and the property to be seized are connected with the offense mentioned in paragraph 1, plus facts establishing probable cause to believe that the property to be seized is presently located on the person, premises, or place to be searched. The facts stated in paragraphs 1 and 2 must be based on either the personal knowledge of the person signing the request, or on hearsay information which he has plus the underlying circumstances from which he has concluded that the hearsay information is trustworthy. If the information is based on personal knowledge, the request should so indicate. If the information is based on hearsay information, paragraph 2 must set forth some of the underlying circumstances from which the person signing the request has concluded that the informant, whose identity need not be disclosed, or his information was trustworthy. Use additional pages if necessary.

4. In paragraph 3, the person, premises, or place to be searched and the property to be seized should be described with particularity and in detail. The types of items which may be seized are set forth in M.R.E. 316(d), MCM, 1984.

5. "U.S. Armed Forces member on active duty," or "the spouse of a U.S. Armed Force member," or "a person serving with the Armed Forces," or other appropriate description of status.

6. "Manual of the Judge Advocate General of the Navy, section 2502a(4)(b)," or "Art. 136, UCMJ," or other appropriate authority.

RECORD OF AUTHORIZATION FOR SEARCH (see JAGMAN 0170)

RECORD OF AUTHORIZATION FOR SEARCH

1. At _____ on _____ I was approached by _____
Time Date Name
in his capacity as _____ who having been first duly sworn,
Duty
advised me that he suspected _____ of _____
Name Offense
and requested permission to search his _____ for _____
Object or Place Items

2. The reasons given to me for suspecting the above named person were:

3. After carefully weighing the foregoing information, I was of the belief that the crime of _____ [had been] [was being] [was about to be] committed, that _____ was the likely perpetrator thereof, that a search of the object or area stated above would probably produce the items stated and that such items were [the fruits of crime] [the instrumentalities of a crime] [contraband] [evidence].

4. I have therefore authorized _____ to search the place named for the property specified, and if the property be found there, to seize it.

Grade	Signature	Title
<hr/>		
Date and Time		

INSTRUCTIONS

1. Although the person bringing the information to the attention of the individual empowered to authorize the search will normally be one in the execution of investigative or police duties, such need not be the case. The information may come from one as a private individual.

2. Other than his own prior knowledge of facts relevant thereto, all information considered by the individual empowered to authorize a search on the issue of probable cause must be provided

Enclosure (3)

under oath or affirmation. Accordingly, prior to receiving the information which purports to establish the requisite probable cause, the individual empowered to authorize the search will administer an oath to the person(s) providing the information. An example of an oath is as follows: Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God? (This requirement does not apply when all information considered by the individual empowered to authorize the search, other than his prior personal knowledge, consists of affidavits or other statements previously duly sworn to before another official empowered to administer oaths.)

3. The area or place to be searched must be specific, such as wall locker, wall locker and locker box, residence, or automobile.

4. A search may be authorized only for the seizure of certain classes of items: (1) fruits of a crime (the results of a crime such as stolen objects); (2) instrumentalities of a crime (example: search of an automobile for a crowbar used to force entrance into a building which was burglarized); (3) contraband (items, the mere possession of which is against the law--marijuana, etc.); or (4) evidence of crime (example: bloodstained clothing of an assault suspect).

5. Before authorizing a search, probable cause must exist. This means reliable information that would lead a reasonably prudent and cautious man to a natural belief that:

- a. An offense probably is about to be, or has been committed;
- b. Specific fruits or instrumentalities of the crime, contraband or evidence of the crime exist; and
- c. Such fruits, instrumentalities, contraband, or evidence are probably in a certain place.

In arriving at the above determination it is generally permissible to rely on hearsay information, particularly if it is reasonably corroborated or has been verified in some substantial part by other facts or circumstances. However, unreliable hearsay cannot alone constitute probable cause, such as where the hearsay is several times removed from its source or the information is received from an anonymous telephone call. Hearsay information from an informant may be considered if the information is reasonably corroborated or has been verified in some substantial part by other facts, circumstances, or events. The mere opinion of another that probable cause exists is not sufficient; however, along with the pertinent facts, it may be considered in reaching the conclusion as to whether or not probable cause exists. If the information available does not satisfy the foregoing, additional investigation to produce the necessary information may be ordered.

CONSENT TO SEARCH (See JAGMAN 0170)

CONSENT TO SEARCH

I, _____, have been advised that inquiry is
being made in connection with _____
_____. I have been advised of my right
not to consent to a search of [my person] [the premises mentioned below]. I hereby authorize
_____ and
_____, who [has] [have been] identified to me as _____
_____ to conduct a complete

Position(s)

search of my [person] [residence] [automobile] [wall locker] [_____] [_____] located at

_____.

I authorize the above listed personnel to take from the area searched any letters, papers, materials,
or other property which they may desire. This search may be conducted on _____.

Date

This written permission is being given by me to the above named personnel voluntarily and
without threats or promises of any kind.

Signature

WITNESSES

Enclosure (4)

